

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

GARY MERTZ,)	
individually and on behalf of all)	Case No. 4:10-cv-2098-HEA
others similarly situated,)	
)	
Plaintiff,)	CLASS ACTION
)	
v.)	
)	Filed Electronically
LINDELL BANK & TRUST COMPANY,)	
)	
Defendant.)	

PLAINTIFF'S MOTION TO STRIKE OFFER OF JUDGMENT

COMES NOW, Plaintiff Gary Mertz ("Plaintiff"), by and through his undersigned counsel, and pursuant to Federal Rule of Civil Procedure 12(f), states as follows in support of his Motion to Strike:

1. On November 5, 2010, Plaintiff filed a Class Action Complaint alleging that Lindell Bank & Trust Company ("Defendant") violated the Electronic Funds Transfer Act , 15 U.S.C. § 1693 *et seq.*
2. On or about November 12, 2010, the same day Defendant was served with Plaintiff's Complaint (see Dkt. No. 5), Defendant served Plaintiff with an "Offer of Judgment" pursuant to Fed.R.Civ.P. 68. A copy of the Offer of Judgment is attached hereto and incorporated herein as Exhibit 1.
3. For the reasons stated in Plaintiff's Memorandum in support of this Motion, Plaintiff respectfully requests this Court strike the Offer of Judgment because, among other reasons, the Offer of Judgment is nothing more than a ploy to "pick off" the named Plaintiff and

undermine class actions as provided for in Rule 23 of the Federal Rules of Civil Procedure. See, Wiess v. Regal Collection, 385 F.3d, 337(3rd Cir. 2004).

WHEREFORE, Plaintiff respectfully requests this Court strike the Offer of Judgment and for such other and further relief as this Court deems just and proper.

Dated: November 19, 2010

Respectfully Submitted,

/s/ Evan D. Buxner
Evan D. Buxner Bar #41559MO

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 19th day of November, 2010, the above and foregoing was electronically filed with the Clerk of the Court using the CM/ECF system which sent notification to all counsel of record through the CM/ECF system.

/s/ Evan D. Buxner _____
Evan D. Buxner

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

GARY MERTZ, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

LINDELL BANK & TRUST COMPANY,

Defendant.

Case No. 4:10-CV-02098-HEA

OFFER OF JUDGMENT

Pursuant to Rule 68(a) of the Federal Rules of Civil Procedure, Defendant Lindell Bank & Trust Company, by and through its attorneys, Lewis, Rice & Fingersh, L.C., while expressly denying liability and denying that any judgment entered as a result of this offer has preclusive effect in any litigation other than the instant case, offers to allow judgment to be entered against it and solely in favor of Plaintiff Gary Mertz, within fourteen (14) days of the date of service of this Offer of Judgment upon him, in the amount of One Thousand One Hundred Dollars (\$1,100.00), representing statutory damages pursuant to 15 U.S.C. Sec. 1693(m), plus Plaintiff Gary Mertz's reasonable attorneys' fees and costs.

Dated: November 12, 2010

LEWIS, RICE & FINGERSH, L.C.

By

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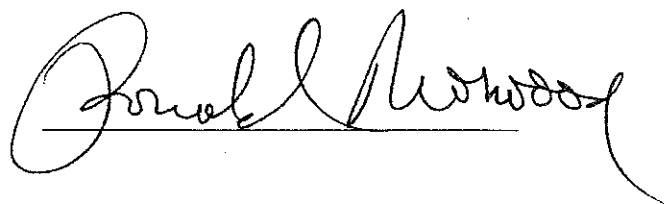


CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was sent, via U.S. mail, first class postage pre-paid, on this 12th day of November, 2010, to the following:

Evan Buxner
The Buxner Law Firm
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St. Louis, MO 63105

R. Bruce Carlson
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A handwritten signature in cursive script, reading "Daniel R. Woodcock", written over a horizontal line.